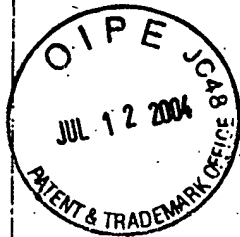


## **APPENDIX 2**

### **Excerpts of the Supplemental Declaration of Jeffrey Magill**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

INTOUCH GROUP, INC.,

Plaintiff,

v.

AMAZON.COM, INC.; LIQUID AUDIO, INC.;  
LISTEN.COM, INC.; ENTERTAINMENT LLC;  
DISCOVERMUSIC.COM, INC.; and MUZE,  
INC.

Defendants.

CASE NO.: C 00 1156 DLJ

SUPPLEMENTAL DECLARATION  
OF JEFFREY MAGILL

## AND RELATED COUNTERCLAIMS

1. Jeffrey Magill, hereby declare as follows:

1. I reside in Palo Alto, California, and I am over 21 years of age. This declaration is being provided as a supplement to my earlier declaration of November 5, 2001, and to my deposition testimony on December 11, 2001.

2. I have no financial interest in any of the parties in the above-captioned lawsuit, and I am not employed by a competitor of any of the parties of the lawsuit. I have not spoken with any other former employees of Telebase Systems, Inc. concerning the subject matter of this declaration, my earlier declaration, or my deposition testimony. I have never reviewed the claims of the patent that I understand to be the subject of this lawsuit.

3. The document with a heading that reads "Music Boulevard™ Fact Sheet," which is labeled "Exhibit 110" and bears production number CDNOW 0004, and is attached as Exhibit A to this Declaration, is a piece of marketing

SUPPLEMENTAL DECLARATION OF JEFFREY MAGILL

-1-

1           10.     Telebase was actively developing the Music Boulevard web site throughout the  
2 winter and spring of 1995. The hardware for operating the web site utilized three server  
3 systems. An Apache<sup>TM</sup> web server connected to the Internet to host the web site. An  
4 application server generated pages for the web server to transmit to users' web browsers. Music  
5 files were stored on hard disks with the application server. A database server, running an  
6 Oracle<sup>TM</sup> relational database, stored user information such as the user names, passwords, e-mail  
7 addresses, credit card information, mailing address information, and purchase information. The  
8 application server accessed the database server to store or retrieve information pertaining to  
9 users.

10           11.     In June of 1995, Telebase completed its initial beta-version of Music Boulevard  
11 and began a "Friends and Family" launch. The web site was accessible over the World Wide  
12 Web, but users were required to provide a correct password in order to gain access. Telebase's  
13 employees provided the password to a few hundred persons to request feedback about the site  
14 and to test its functionality. Telebase's users also placed orders to purchase music to test the  
15 functionality of the fulfillment system. To my knowledge, none of the users were required to  
16 sign a non-disclosure agreement to participate in the "Friends and Family" launch.

17           12.     Telebase formally launched the Music Boulevard web site to the general public  
18 on August 16, 1995, accessible through the URL "www.musicblvd.com." Telebase actively  
19 promoted the web site through newspaper interviews, demonstrations, advertising, and press  
20 releases, such as the copy of the press release attached as Exhibit A. I was involved in the  
21 drafting and editing of this press release, and was careful to ensure its accuracy.

22           13.     The web site that Telebase launched on August 16, 1995 contained a  
23 comprehensive music database of over 145,000 listings, 30-second music samples, cover art and  
24 photos, song lists, original and published reviews, and original and published biographies. The  
25 sound samples, music reviews, and biographies were included to entice users to frequently enter  
26 the web site and purchase music. Telebase promoted the Music Boulevard web site as a  
27 complete, on-line music resource and music store.  
28

1           14.     When a user accessed the Music Boulevard web site in the format available in  
2 August 1995, the user would first see a "Welcome to Music Boulevard" screen, known as a  
3 "splash page." After "clicking" on an icon on this screen, the user was prompted to either  
4 register with the web site or "sign in" by providing a username and password from a previous  
5 registration. If a user attempted to sign in with an incorrect username or password, an error  
6 page was generated, prompting the user to try again to enter the correct information. For at least  
7 several weeks after the launch of Music Boulevard in August of 1995, the user was not able to  
8 gain access to any features of the web site without first providing a user name and password to  
9 log into the site.

10           15.     A user registered with the web site by supplying at a minimum a unique user  
11 name, a password, and an e-mail address. During this process, a search was performed in the  
12 Oracle<sup>TM</sup> relational database to confirm that the user name was not already utilized for  
13 identifying another user. If the user name was previously stored in the database, the user was  
14 prompted to choose another user name.

15           16.     The user registration system enabled Telebase to monitor usage of the site.  
16 Telebase was very interested in capturing data to determine the number of unique users that  
17 were coming onto our site. We were monitoring this information during the "Friends and  
18 Family" launch and throughout August 1995 after the public launch of the web site. Our  
19 advertisers also wanted to know how many different users were entering the site each day to  
20 assess the popularity of the web site. We performed simple searches in our web logs to  
21 determine this information.

22           17.     When a user entered a user name and password information to "sign in" to the  
23 web site, a session identification number ("session ID") was assigned to associate all of the  
24 user's activities on the web site during the session. All of the events that occurred on the site  
25 were recorded in a manner that associated the events with a session ID, which in turn was  
26 associated with the respective username. Through this technology, Telebase was able to review  
27 the "click stream" of a particular user on the site.  
28

1        18.     Once the user provided a correct user name and password, an entry page was  
2 transmitted to the user's browser, which allowed the user to browse the web site to search  
3 according to different types of music, review music news or read music articles, or purchase  
4 music. Exhibit B is an article that appears to be from the September 1995 issue of Information  
5 Today. The illustration at the center of the article is a screen shot from the entry page of the  
6 Music Boulevard web site as it existed at that time.

7        19.     A user could search for and locate information about a particular album. Once a  
8 user was shown a page for a particular album, the user could select to preview a music sample  
9 for a selected song on that album. After selecting to preview a music sample, the user's browser  
10 would then receive a download of an MPEG file, which could then be played for the user using  
11 a plug-in installed on the user's browser. Users could install any of a number of players that  
12 were freely available to download from other web sites, such as an MPEG player from Xing  
13 Technology Corporation. Music Boulevard provided hyperlinks to other web sites from which  
14 users could download MPEG player plug-in software.

15        20.     Downloading a music file automatically provided an instruction to the user's  
16 browser to open the installed player plug-in and begin playback of the downloaded audio file.  
17 A user could then listen to the audio file on the user's computer speakers.

18        21.     While navigating through the web site, the user could also select to purchase one  
19 or more CDs or cassettes from the site. Upon selecting to purchase an item, a record of the  
20 request was stored in a "shopping cart" associated with the user. Each purchase request by a  
21 user was added to the user's "shopping cart."

22        22.     When the user selected to "check out" and tally the purchase requests in the  
23 "shopping cart," the web site provided a screen that displayed the user's purchase requests, from  
24 which the user could select and finalize a purchase order. The system also prompted the user to  
25 select whether the web site should continue using any credit card and mailing address  
26 information that was previously provided to the system. The credit card, mailing address, and  
27 purchase request information was stored in a relational database on a database server and was  
28 associated with the user name information that was also stored in the database server. Music

1 Boulevard also provided an option for users to provide demographics information. Any  
2 information that a user provided was associated with the user name and user account in the  
3 relational database.

4 23. If a user selected to "sign off" the web site, the system disabled the session ID.  
5 If a user exited the site without selecting to "sign off," the web server utilized a time clock to  
6 wait a certain amount of time for another user request. If another URL with the particular  
7 session ID was not received within a certain number of minutes, the session automatically  
8 "timed out."

9 24. To consolidate the purchase request information for processing, Telebase ran a  
10 program once or twice a day that performed a search through the database server to detect  
11 purchase request orders that had been placed by users but had not yet been submitted to a  
12 fulfillment center. The program created a table that listed each purchase order according to user  
13 name, shipping address, and purchase items. The table was stored as a file that was then  
14 transmitted by file transfer protocol ("ftp") to Valley Record Distributors for batch order  
15 processing. Valley Record Distributors periodically provided files to Telebase containing status  
16 information on each purchase request (e.g., in process, back-ordered, etc.). This information  
17 was then stored in the database server and associated with the respective users.

18 25. Exhibit C, entitled "Music Boulevard Statistics," provides sales, membership  
19 information, and download information pertaining to the Music Boulevard web site between  
20 July 1995 and December 1995. The "Sales History" page of the document indicates that  
21 Telebase received 29 orders in July, 157 orders in August, 259 orders in September, and 528  
22 orders in October. Based upon my recollection, the sales numbers in the document entitled  
23 "Music Boulevard Statistics" represents an accurate description of the sales activity on the web  
24 site. As shown on page 15 of Exhibit C, Telebase began offering a membership component of  
25 the service in the first few months following launch that allowed Telebase to continue to collect  
26 more detailed registration information regarding members. Therefore, even after Telebase  
27 eliminated the requirement that all users register with the site, there was still a component of the  
28 service that required users to log-on as registered users.